

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO: _____
v.	:	DATE FILED: _____
DONNA M. FECONDO	:	VIOLATIONS:
a/k/a "Donna Silvestri Fecondo"	:	26 U.S.C. § 7202 (failure to collect and pay over employment taxes – 2 counts)
	:	26 U.S.C. § 7203 (failure to file return – 4 counts)

INDICTMENT

COUNTS ONE AND TWO

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

Background

1. Defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, was the president and sole owner of Joseph Silvestri & Son, a/k/a Joseph Silvestri & Son, Inc. ("JSSI").
2. JSSI was a business operating a mushroom farm, with its principal place of business in Garnet Valley, Pennsylvania.
3. The Internal Revenue Service ("IRS") was an agency within the United States Department of Treasury that was charged with the responsibility, among other things, of assessing and collecting, as well as enforcing compliance with, various types of federal taxes, including employment taxes, corporate income taxes, and personal income taxes.

Employment taxes

4. An employer is responsible for withholding Federal Insurance Contribution Act (“FICA”) taxes – consisting of Social Security taxes and Medicare taxes -- from her employees’ wages, and remitting them to the IRS.

5. Employers are required to withhold and pay over not only employee FICA taxes, but also employee federal income taxes (subject to the employee’s claimed exemptions) – collectively, “employment taxes.”

6. As the sole owner of JSSI, defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, was responsible for collecting, accounting for, and paying over employment taxes.

7. Agricultural businesses that pay wages to employees are required to file Forms 943, Employer’s Annual Federal Tax Return for Agricultural Employees, with the IRS. Businesses (employers) use this form to report all employees’ wages and employment taxes.

8. An agricultural employer who files Forms 943 must pay payroll taxes with each payroll cycle. JSSI paid its employees weekly and was required by the IRS to electronically deposit its payroll taxes weekly.

The failure of DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, to timely file Form 943 or pay payroll taxes for tax years 2013 through 2016

9. For tax years 2013 and 2016, the Form 943 filing deadlines were January 31, 2014 and January 31, 2017, respectively; however, if an employer made deposits on time in full payment of the taxes due for the year, the filing deadlines were February 10, 2014 and February 10, 2017, respectively. For tax year 2014, the Form 943 filing deadline was February 2, 2015; however, if an employer made deposits on time in full, the filing deadline was February 10,

2015. For tax year 2015, the Form 943 filing deadline was February 1, 2016; however, if the employer made deposits on time in full payment of the taxes due for the year, the Form 943 filing deadline was February 10, 2016.

10. Defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, did not timely file Forms 943 for tax years 2013 through 2016. Instead, defendant FECONDO filed Forms 943 for tax years 2013 through 2016 in or about July 2017, after the Internal Revenue Service had contacted her about her failure to file or pay employment taxes.

11. Although defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, reported substantial payroll taxes due and owing on the Forms 943 for tax years 2013 through 2016 that she made in July 2017, and although JSSI withheld employment taxes from its employee's wages, defendant FECONDO did not pay over any employment taxes to the IRS for those tax years.

12. Specifically, in or about July 2017, defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, made a Form 943 return for tax year 2013, in which she reported that in 2013, JSSI paid its employees approximately \$2,405,862.78 in wages, and as a result owed approximately \$521,590.10 in employment taxes.

13. Similarly, in or about July 2017, defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, made a Form 943 return for tax year 2014, in which she reported that in 2014, JSSI paid its employees approximately \$2,277,292.91 in wages, and as a result owed approximately \$492,580.56 in employment taxes.

14. Also, in about July 2017, defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, made a Form 943 return for tax year 2015, in which she reported that in 2015,

JSSI paid its employees approximately \$2,275,980.09 in wages, and as a result owed approximately \$476,373.92 in employment taxes.

15. Additionally, in or about July 2017, defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, made a Form 943 return for tax year 2016, in which she reported that in 2016, JSSI paid its employees \$2,179,117.58 in wages, and as a result owed approximately \$463,600.96 in employment taxes.

16. In total, from approximately January 2013 through December 2016, defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, should have withheld and paid over to the IRS a total of approximately \$1,255,068.94 in employment taxes, but instead paid over nothing. Of this amount, in total from approximately January 2015 through December 2016, defendant FECONDO should have withheld and paid over to the IRS a total of approximately \$599,159.94, but instead paid over nothing.

17. On or about the dates below, in Garnet Valley, in the Eastern District of Pennsylvania and elsewhere, defendant

**DONNA M. FECONDO,
a/k/a "Donna Silvestri Fecondo,"**

did willfully fail to pay over to the IRS all of the federal income taxes and Federal Insurance Contributions Act ("FICA") taxes that were withheld and due and owing to the United States on behalf of JSSI and its employees for each of the following years with each year constituting a separate count of this indictment:

Count	Year	Employment Taxes Withheld
1	2015	302,261.46
2	2016	296,898.48

All in violation of Title 26, United States Code, Section 7202.

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Counts One and Two are incorporated here.

Corporate income taxes

2. Unless exempt under section 501 of the Internal Revenue Code, all domestic corporations must file a Form 1120 U.S. Corporation Income Tax Return annually, unless they are required, or elect to file, a special return.

3. JSSI was not exempt under Section 501 of the Internal Revenue Code, and it was not required, and had not elected, to file a special return. Therefore, JSSI was required to file Forms 1120 annually.

4. During the calendar year 2015, JSSI had gross receipts of at least approximately \$3,748,821.

5. The defendant, **DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo**, as president of JSSI, therefore was required by law, after the close of the calendar year 2015 and on or before March 15, 2016, to make an income tax return, for and on behalf of the corporation, to the Internal Revenue Service Center, at Cincinnati, Ohio, or to the person assigned to receive returns at the local office of the Internal Revenue Service at Philadelphia, Pennsylvania, stating specifically the items of the corporation's gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, defendant FECONDO did willfully fail, on or about March 15, 2016, in the Eastern District of Pennsylvania and elsewhere, to make an income tax return at the time required by law.

In violation of Title 26, United States Code, Section 7203.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs one through three of Counts One and Two, and paragraphs 2 and 3 of Count Three, are incorporated here.

2. During the calendar year 2016, JSSI had gross receipts of at least approximately \$4,052,949.60.

3. During the calendar year 2016, the defendant, **DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo**, as president of JSSI, therefore was required by law, after the close of the calendar year 2016 and on or before March 15, 2017, to make an income tax return, for and on behalf of the corporation, to the Internal Revenue Service Center, at Cincinnati, Ohio, or to the person assigned to receive returns at the local office of the Internal Revenue Service at Philadelphia, Pennsylvania, stating specifically the items of the corporation's gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, defendant FECONDO did willfully fail, on or about March 15, 2017, in the Eastern District of Pennsylvania and elsewhere, to make an income tax return at the time required by law.

In violation of Title 26, United States Code, Section 7203.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs one through three of Counts One and Two are incorporated here.

Personal income taxes

2. All individuals who have gross income in any year meeting certain threshold amounts must file a Form 1040 U.S. Individual Income Tax Return.

3. From in or about January 1, 2015, through in or about December 31, 2015, defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, received gross income consisting of approximately \$108,000 of wages from JSSI.

4. During the calendar year 2015, at Garnet Valley, in the Eastern District of Pennsylvania, defendant

**DONNA M. FECONDO,
a/k/a Donna Silvestri Fecondo,**

who was a resident of Garnet Valley, had and received gross income substantially in excess of the minimum filing requirement. By reason of such gross income, defendant FECONDO was required by law, following the close of the calendar year 2015 and on or before April 18, 2016, to make an income tax return to the Director, Internal Revenue Service Center, at Philadelphia, Pennsylvania, or other proper officer of the United States, stating specifically the items of her gross income and any deductions and credits to which she was entitled; that knowing this, defendant FECONDO willfully failed to make an income tax return to the Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

In violation of Title 26, United States Code, Section 7203.

COUNT SIX

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs one through three of Counts One and Two, and paragraph 2 of Count Five, are incorporated here.

2. From in or about January 1, 2016, through in or about December 31, 2016, defendant DONNA M. FECONDO, a/k/a Donna Silvestri Fecondo, received gross income consisting of approximately \$104,000 of wages from JSSI.

3. During the calendar year 2016, at Garnet Valley, in the Eastern District of Pennsylvania, defendant

**DONNA M. FECONDO,
a/k/a Donna Silvestri Fecondo,**

who was a resident of Garnet Valley, had and received gross income substantially in excess of the minimum filing requirement. By reason of such gross income, defendant FECONDO was required by law, following the close of the calendar year 2016 and on or before April 18, 2017, to make an income tax return to the Director, Internal Revenue Service Center, at Philadelphia, Pennsylvania, or other proper officer of the United States, stating specifically the items of her gross income and any deductions and credits to which she was entitled; that knowing this,

defendant FECONDO willfully failed to make an income tax return to the Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

In violation of Title 26, United States Code, Section 7203.

A TRUE BILL:



GRAND JURY FOREPERSON



**JENNIFER ARBITTIER WILLIAMS
UNITED STATES ATTORNEY**

No. _____

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

Criminal Division

THE UNITED STATES OF AMERICA

v.

DONNA M. FECONDO,
a/k/a "Donna Silvestri Fecondo"

INDICTMENT

Counts

26 U.S.C. § 7202 (failure to collect and pay over employment taxes – 2 counts)

26 U.S.C. § 7203 (failure to file return – 4 counts)

Filed in open court this _____ day,
Of _____ A.D. 20____

Clerk

Bail, \$ _____